

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-052608

08/13/2018

HONORABLE CYNTHIA J. BAILEY

CLERK OF THE COURT
A. Wood
Deputy

YUNG LIN ENTERPRISES INC

KIRSTEN L COPELAND

v.

BANK OF AMERICA N A, et al.

JACOB A MASKOVICH

MELANIE E BEAUCHAMP
RYAN J MCCARTHY
JUDGE BAILEY

MINUTE ENTRY

The parties appeared at a Final Trial Management Conference on August 10, 2018. Among other issues raised by the parties were issues regarding the relevance of the anticipated testimony of two Plaintiff witnesses.

The first issue regards the testimony of David Skipton ("Skipton"). Skipton was disclosed as a fact witness regarding Plaintiff's insurance claim to Farm Bureau Property & Casualty Insurance Company. Defendant Bank of America N.A. ("BANA") and Defendants Beauchamp Law Office, P.C and Melanie Beauchamp ("Beauchamp") seek to preclude Skipton from testifying as an expert on the issue of value of the claim. All parties agree that Skipton was not noticed as an expert pursuant to Rule 26.1 Ariz.R.Civ.P. The Court will defer ruling on this issue until further argument is made and/or a hearing outside the presence of the jury is conducted. The parties are each instructed, in the meantime, to provide the court with a memorandum of law, not to exceed 5 pages in length regarding whether the proposed testimony by Skipton constitutes expert or lay witness testimony under Rules 701, 702 and 703, Ariz. R. Evid. by Friday August 17th at 12:00 p.m. An email version of the memorandums shall be emailed to the Division's JA April Johnson at ajohnson@superiorcourt.maricopa.gov by 12:30

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p.m. Friday August 17th. Failure to e-file the memorandum AND send an email shall be deemed a waiver of that parties' argument on this issue.

The second issue regards the testimony of Plaintiff's expert Geoffery Sturr. Beauchamp filed a Motion to Preclude Expert Opinions and Testimony of Mr. Geoffrey M. T. Sturr on January 8, 2016. Plaintiff filed a Response on February 1, 2016. The Court deemed the Motion premature and ordered that Beauchamp timely re-file the Motion once a trial date was set. The parties agreed that the court could review those pleadings to determine its findings.

On February 24, 2017, prior to the original trial setting date, Defendants filed a Motion to Preclude Expert Opinions and Testimony of Frederick Berry and Geoffrey Sturr. On March 14, 2017, the court granted Plaintiff's Motion to Strike the Motion to Preclude as untimely.

Beauchamp seeks to preclude Geoffery Sturr's testimony as irrelevant under Rules 401, 402 and 403 of the Ariz.R.Evid. Pursuant to Plaintiff's Third Supplemental Disclosure Statement dated August 7, 2015, Mr. Sturr is expected to testify that Beauchamp had a fiduciary duty under Ethical Rule (ER) 1.15, of the Rules of Professional Responsibility and violated that duty and the Ethical Rule when she acted in this case. Plaintiff argues in her February 1, 2016 Response, that Beauchamp's fiduciary duties to Plaintiff under ER 1.15 "will be a key issue for jury instructions in terms of elements of intent, lack of justification and wrongful conduct". She then cites to a case wherein a violation of ethical rules was properly considered as evidence of malpractice. *See Elliott v. Videan*, 164 Ariz. 113, 116, 791 P.2d 639, 642 (App. 1989). Plaintiff argues that the applicable professional standards of conduct for an attorney dealing with Plaintiff's property interest is relevant to a jury deciding the matter before it. Plaintiff's legal argument is unpersuasive, as there is no claim of Legal Malpractice pled in this case. The Court finds that Beauchamp's violation of an ethical rule is not relevant pursuant to Rule 401 Ariz. R. Evid., as any alleged violation does not have a tendency to make any fact actually before the jury more or less probable and the alleged violation is not of consequence in determining the result of the underlying action. The Court further finds that even if Mr. Sturr's testimony is relevant under Rule 401, that the probative value of such evidence is outweighed by the danger of unfair prejudice to Beauchamp and/or confusing or misleading the jury pursuant to Rule 403. Because a claim of Legal Malpractice was not pled, testimony regarding whether or not Beauchamp violated Ethical Rules is highly prejudicial. The jury would get very little probative value from such evidence. More dangerous is the possibility that the jury believed that a violation of an ethical rule, in and of itself, makes it more likely that Beauchamp meets on element of the claims made.

IT IS THEREFORE ORDERED precluding Mr. Sturr from testifying about alleged fiduciary duties Beauchamp had to Plaintiff or her alleged violation of ER 1.15.